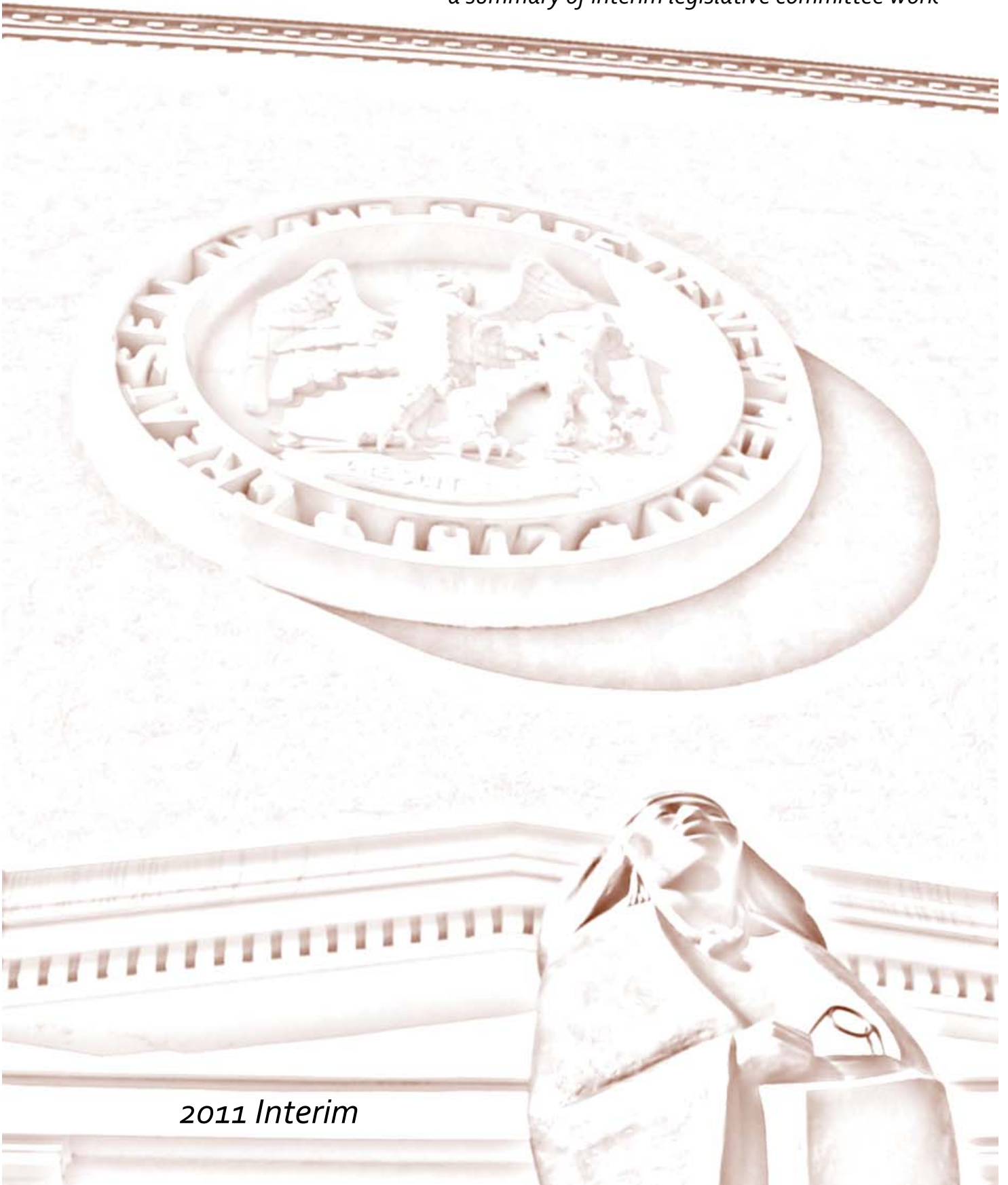


# ***BEYOND***

## **THE ROUNDHOUSE**

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*a summary of interim legislative committee work*



*2011 Interim*

***BEYOND***



**THE ROUNDHOUSE**

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*a summary of interim legislative committee work*

*2011 Interim*

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## THE 2011 INTERIM IN BRIEF

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After focusing in the previous interim on cost-cutting measures for solvency and on restructuring the entirety of state government, the legislature paused in its 2011 interim work to focus on an even more harrowing task — redistricting.

With barely 10 weeks between its first meeting and its eleventh and last, the interim Redistricting Committee held hearings around the state to gather local input on how best to reconfigure voting districts to accommodate major demographic shifts over the past decade. The committee took testimony on more than two dozen redistricting plans and directed that they be drafted for introduction in the September special session; an equal number of plans were developed and introduced by individual members. Only four plans passed — one each for the house of representatives, senate, Public Regulation Commission and Public Education Commission — with no final house vote taken on the bill that would have redistricted the state's congressional seats. Only the least controversial measure — a bill redistricting the Public Education Commission — was signed into law.

Once the special session adjourned and the matter of redistricting moved on to the courts, interim committees resumed the work they had suspended in August. Although the Revenue Stabilization and Tax Policy Committee heard testimony that the state is climbing steadily out of its deficit status and recovering some of the losses sustained since 2008, worries of an ongoing fiscal crisis carried over from the previous interim and set the tone in hearings on many topics across all committees.

The Courts, Corrections and Justice Committee heard from the judiciary about impending furloughs and court closures if a budget increase does not materialize soon, while the New Mexico Finance Authority Oversight Committee considered the vast discrepancy between the state's transportation infrastructure needs and projected transportation funding. The Tobacco Settlement

Revenue Oversight Committee, which had been informed in 2010 that "millions of dollars" in Master Settlement Agreement payments already received by the state may now be at risk, found out in 2011 just how substantial the liability might be — \$350 million.

Behavioral and mental health issues garnered attention from multiple committees, as did environmental issues, including the long-term effects of the various wildfires that burned through the summer. One interim body — the Natural Gas Emergency Investigation Task Force — was formed in response to a weather incident that took place during 2011 and will continue its work in 2012.

The new administration in the governor's office brought a shifting cast of agency personnel testifying before committees, as some of the governor's initial appointees moved on to other jobs and were replaced. But by the end of the interim, most of the dust had settled, with agency management stabilized and one redistricting issue — congressional district boundaries — decided by the courts. Interim committees took a realistic approach to their endorsement lists for the 2012 session, keeping their special appropriations requests to a bare minimum and keeping their fingers crossed that the state's finances would recover in the new year.

## BEHAVIORAL HEALTH SERVICES SUBCOMMITTEE

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The New Mexico Legislative Council created the Behavioral Health Services Subcommittee, which met twice during the interim — once at the State Capitol and once at the Mesilla Valley Hospital in Las Cruces. The subcommittee reviewed the status of behavioral health services delivered through the Interagency Behavioral Health Purchasing Collaborative's contract with the single statewide behavioral health managed-care entity, OptumHealth New Mexico. This testimony included review of the corrective action plan under which OptumHealth has been operating. The subcommittee heard testimony from the executive director of the collaborative, Human Services Department (HSD) staff and stakeholders on the possibility of reintegrating behavioral health benefits with physical health benefits in the Medicaid redesign. It devoted substantial attention to the state's substance abuse epidemic and also heard testimony on criminal justice diversion programs for individuals living with mental illness; behavioral health care delivery and finance innovations; and the behavioral health care work force.

## COURTS, CORRECTIONS AND JUSTICE COMMITTEE

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The interim began with a visit to two juvenile correctional facilities in Albuquerque — the Youth Diagnostic and Development Center and Camino Nuevo Youth Center. The committee heard a presentation by the new administration at the Children, Youth and Families Department (CYFD) during which Secretary of Children, Youth and Families Yolanda Berumen-Deines expressed the administration's commitment to Cambiar New Mexico and updated the members on the implementation and progress of Cambiar. The secretary and her staff explained their philosophy of juvenile justice and discussed how the programs provide a continuum of services from the time a youth



enters the system until the youth reenters society. Members of the public also addressed the committee. The tours of both facilities and interaction with some of the juveniles living there further educated the committee and members of the public on the nature and progress of Cambiar New Mexico.

The committee held a hearing for several hours on the highly publicized action of Secretary of State Dianna J. Duran submitting 64,000 voter files to the Department of Public Safety (DPS) for investigation. The meeting room was crowded with a large turnout from the public, county clerks, various organizations and legislators. Secretary of State Duran and her staff answered questions and

*The committee held a hearing on the highly publicized action of Secretary of State Dianna J. Duran submitting 64,000 voter files to the Department of Public Safety for investigation.*

discussed the reason for the investigation, namely, to verify the voter rolls for accuracy. Many expressed their concern with the action, the lack of transparency, the seemingly criminal investigation, the lack of authority to provide voter records to the DPS and why the county clerks were not involved in the

investigation. The secretary of state assured committee members and members of the public that the purpose of her action was simply to verify the accuracy and integrity of voter records in New Mexico. She reminded committee members that the purging of voter rolls had not been done for years and that the rolls needed to be updated in compliance with federal law. The secretary of state described the process of reviewing voter records and comparing them with records of the Motor Vehicle Division of the Taxation and Revenue Department (TRD) and of the Social Security Administration. She assured everyone that her office has no authority to remove anyone from the voter files.

A two-day meeting was held on oversight of the Corrections Department and on getting to know the department's new secretary, Lupe Martinez. Issues discussed included private prisons, probation and parole, prison reform, medical services, reentry efforts, community corrections and the use of solitary confinement. The committee toured the New Mexico Women's Correctional Facility and Western New Mexico Correctional Facility while in Grants. Not long after the corrections meeting, Secretary Martinez resigned. Alfonso Solis was appointed acting secretary, and, thereafter, Gregg Marcantel was appointed the new secretary of corrections in November. The committee heard updates from both Acting Secretary Solis and Secretary Marcantel after their respective appointments.

The committee was fortunate to have James Austin, Ph.D., present and discuss his work on

solitary confinement of prisoners, including how he helped set up the classification system in New Mexico. Dr. Austin described the types of segregation for prisoners, the conditions of confinement and multilevel, incentive-based systems that have clear benchmarks for inmates and staff. The committee also heard a report by the Institute for Social Research, titled "New Mexico's Transition from Prison to Community Initiative: A Gaps Analysis", which identified the strengths and gaps in reentry efforts in the state. The project was funded by federal Byrne grant funds and modeled after the national Transition from Prison to Community Initiative. An innovative organization, Crossroads for Women, also described to the committee its success in reintegrating women into the community.

A full day in October was devoted to the judiciary. Among the highlights was a report from the New Mexico Reengineering Commission. This commission was created by the supreme court and, with help from the National Center for State Courts, conducted an extensive study on how to operate courts more effectively and efficiently. Surveys were taken and working groups formed. Ideas were explored and experts, nonexperts and interested parties were consulted. The work of the commission was funded by grants, with no state funds expended. The commission had many recommendations, including information technology initiatives, electronic filing and case management systems, which are already being implemented in state courts. The committee saw an extensive demonstration of the Odyssey Case Management System during a working lunch. Other initiatives included traffic citation reform, merging limited jurisdiction courts on a voluntary basis, enhancing the use of alternative dispute resolution, improving services for self-represented civil litigants, providing for on-record appeals from magistrate courts and identifying best programs, practices and pilot projects to help with future reforms. The committee endorsed the legislation proposed by the judiciary to assist in creating these reforms.

Despite the innovation and creativity of the judiciary in finding solutions to the budget crisis, furloughs and partial court closures are anticipated if a \$5 million budget increase is not provided. The judiciary has been operating with an 11% vacancy rate and hopes to reduce that to 8% with the increase. Also requested were five additional judgeships, although there is a need for 30 statewide.

One of the greatest challenges facing law enforcement agencies and detention centers in New Mexico and across the nation is how to respond to people with mental health disorders. In many cases, law enforcement and detention facilities take the place of proper, ongoing treatment for those with mental illness. A task force was formed to develop humane and effective strategies to serve people with mental health disorders and reduce the number of those who are in detention or who require law

enforcement intervention. The task force presented its recommendations to the committee. These recommendations include funding regional crisis triage sites; providing respite care services throughout the state as an alternative to incarceration; establishing training programs for family members, teachers, first responders and others; establishing a statewide call center; and developing community coalitions. Implementation will require commitment and more work and resources, but if implemented, these services would ease the burden on, and free up, resources of law enforcement, the courts and corrections facilities.

Counties spend 30% to 40% of their resources on detention operations and have been searching for ways to reduce this burden for years. A task force that included representatives from the courts and other branches of the criminal justice system was formed to identify ways to increase efficiency and reduce the number of arrestees and offenders housed in county facilities. The task force had short-, medium- and long-term recommendations that involve cooperation by the courts, district attorneys, public defenders and counties, as well as reforms and legislation. Some of the recommendations echo the changes being proposed by the judiciary, including studying how to decriminalize traffic cases.

The committee examined many other topics throughout the interim, including public financing of elections, disclosure of campaign contributions, consumer lending issues, mortgage foreclosures, theft of recycled metals, liability issues relating to Spaceport New Mexico and legislation proposed by the attorney general and others. Of the 23 bills presented and discussed, the committee endorsed 12.

## DISABILITIES CONCERNS SUBCOMMITTEE

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The Disabilities Concerns Subcommittee met twice during the interim — once in Santa Fe and once on the site of the Southwest Conference on Disability at the Albuquerque Convention Center. The subcommittee heard extensive testimony on the status of long-term services in the state, focusing particularly on the developmental disabilities Medicaid waiver and on the long waiting lists associated with all of the home- and community-based waivers. Disability policy experts and staff from the HSD, the Department of Health (DOH), the New Mexico Developmental Disabilities Planning Council, the Governor's Commission on Disability and the Independent Living Resource Center presented testimony before the subcommittee, which generated a great deal of interest among and input from

individuals living with disabilities and in the disability rights advocacy community.

## ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

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During the 2011 interim, the Economic and Rural Development Committee concentrated on topics central to the state's economy in both rural and urban areas. As in years past, the committee convened in areas beyond the I-25 corridor, staying true to its mission to reach out to communities all over the state.

In Tucumcari, the committee covered a broad range of issues, including the winding down of the New Mexico Office of Recovery and Reinvestment, as well as an overview of the economic and rural development projects that it funded; a snapshot by the Tucumcari Small Business Development Center of the successes and possibilities for development in the region; the relationship between commercial real estate and economic development; and the Federal Communications Commission's national broadband plan and its potential impact on rural New Mexico customers served by rural independent telephone companies.

The committee also dedicated an entire day of presentations to the economic impact on the state of both traditional and renewable energy and the effort to build the transmission infrastructure necessary to get energy from producers to consumers. The hands-on aspect of this was a tour of the North American Wind Research and Training Center at Mesalands Community College.

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In Santa Rosa, the committee heard experts from the University of New Mexico (UNM) and New Mexico State University (NMSU) provide an analysis of the 2010 census data, which reveal a population shift from rural to urban. The committee also heard a discussion of New Mexico's demand for labor by industry, now and in the near future, and the extent to which the state is meeting and plans to meet that demand.

The committee next met in Grants and heard presentations on the New Mexico Space Trail;

the UNM School of Architecture and Planning's Community Outreach Program, Design and Planning Assistance Center; the Grants MainStreet Project; the Local Economic Development Act; the effectiveness of individual development accounts promoting economic and rural development; tax increment development districts; Tourism Department initiatives; and the economic development prospects of uranium in New Mexico, including a report on New Mexico's energy strategy and economic development in Cebolleta based on uranium. The hands-on segment of the Grants meeting was a tour of the New Mexico Mining Museum.

The committee also met in Santa Fe, where it heard presentations regarding the vision and legislative priorities of the Economic Development Department (EDD) and the Regulation and Licensing Department; the laboratory partnership with small business tax credit; a financial assessment of merging the Tourism Department and the Cultural Affairs Department; transportation reinvestment zones; home-based work; preventing metal theft; the Homeowners Association Act; rural economic opportunities with Corn Board Manufacturing, Inc.; and the economic results of tax and other incentives provided to the film industry, the energy industry, job training programs and businesses.

The committee endorsed one piece of legislation for the 2012 legislative session — a joint memorial requesting that the state make the energy industry a central component of the state's economic development strategy.

## INDIAN AFFAIRS COMMITTEE

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The Indian Affairs Committee has addressed issues that disproportionately affect Native Americans residing in New Mexico since the inception of the committee in 1989 by post-session action of the New Mexico Legislative Council. The committee strives to facilitate government-to-government cooperation with all Indian nations, tribes and pueblos in New Mexico. The committee's meetings are an essential way of relating the work of the legislature to the Native American segment of its constituency, and they are held in locations accessible to Native Americans and their leaders. In fulfillment of its mission, the committee held meetings during the 2011 interim at three pueblos, one Navajo Nation chapter, the Southwestern Indian Polytechnic Institute (SIPI) and other locations accessible to tribal leaders and Native Americans.

The first meeting of the committee is traditionally an organizational meeting to determine the

most currently pressing issues affecting Native Americans. Therefore, the committee heard from Arthur P. Allison, secretary-designate, Indian Affairs Department (IAD); Sidonie Squier, secretary, HSD; and Hanna Skandera, secretary-designate, Public Education Department (PED), during the first meeting. Committee members focused on the priorities and concerns of the IAD, the priorities and initiatives of the HSD and the PED and the goals and objectives for the upcoming interim. The committee outlined the major issues affecting Native Americans for the 2011 interim in its work plan and meeting schedule.

During the second meeting, the committee heard status updates from the Mariano Lake Chapter and the Churchrock Chapter of the Navajo Nation as well as the Pueblo of Zuni. The committee also received an update from Ben Shelly, president of the Navajo Nation, and Johnny Naize, speaker of the twenty-second Navajo Nation Council. John D'Antonio, state engineer, updated the committee on the state funding obligation of the Taos Water Settlement, the Navajo Nation Water Settlement and the Aamodt Water Settlement. Timothy Benally, assistant superintendent of the Department of Diné Education, expressed concerns regarding information-sharing between public schools and tribal entities. The committee was introduced to the new head of Native American tourism with the Tourism Department, Mark Trujillo. Former State Senator Leonard Tsosie, representing the Navajo Nation Council, gave the committee an overview of the Navajo Nation legislative process. Dr. José Z. Garcia, secretary of the Higher Education Department (HED), gave an overview of changes to the HED funding formula that will help to close the Native American student achievement gap. The committee requested further information from the IAD regarding the funding formula for the PED and its effect on the Zuni Public School District. John Billison, executive director of the Navajo Nation Division of Public Safety, told the committee that the budget for the Emergency Management Division was reduced by \$19,000 in one year.

*The committee expressed concerns about protections for traditional cultural property on state land, specifically Mount Taylor.*

The committee was hosted by the Pueblo of Zuni on the second day of the second meeting. Amadeo Shije, tribal partnership data specialist from the Denver Regional Census Center, presented statistics regarding New Mexico Native American populations from the 2010 census. David Eisenberg, contract counsel from the Public Defender Department, updated the committee on the status of a public defender's office in McKinley County. The committee expressed concerns about protections for

traditional cultural property on state land, specifically Mount Taylor, as well as significant concern about in situ leaching (ISL) uranium mining. Jerry Schoeppner from the Ground Water Quality Bureau of the New Mexico Department of Environment (NMED) explained the process of ISL mining. Leona Morgan, representing the Eastern Navajo Diné Against Uranium Mining (ENDAUM), told the committee that the Navajo Nation is opposed to any uranium mining. The committee decided to request an additional meeting day in order to address the issue of uranium mining.

At its third meeting, the committee focused on issues of federal and state tribal recognition, as well as economic opportunities for the tribes, collection of cigarette taxes and escrow payments on tribal lands and the educational needs of Native American children. Bernie Teba, CYFD tribal liaison,

*After the committee met with the Fort Sill Apache Tribe, the United States Department of the Interior awarded the tribe a proclamation establishing a reservation on 30 acres of land near Deming.*

outlined and answered questions about the Indian Child Welfare Act of 1978, a federal act that enables adopted Indian children to receive their tribal affiliation information. The committee met with the Fort Sill Apache Tribe, the Mescalero Apache Tribe and the Chihene Nde

Nation, a group of individuals who are attempting to achieve tribal recognition at the federal level. The Chihene Nde Nation requested support from the committee in its attempts to achieve tribal recognition. The Fort Sill Apache Tribe is a federally recognized tribe with trust land in New Mexico. The Mescalero Apache Tribe expressed concerns about tribal recognition for the Chihene Nde Nation as well as concerns about acknowledging the Fort Sill Apache Tribe as a New Mexico tribe. The committee discussed the appropriate role for itself and for the state regarding tribal recognition. After the committee met with the Fort Sill Apache Tribe, the United States Department of the Interior awarded the tribe a proclamation establishing a reservation on 30 acres of land near Deming. Though New Mexico does not have a formal system of tribal recognition, issues of recognition in the state may need to be addressed by the committee in the future.

During the second day of the third meeting, the committee discussed the estimated severance tax bond capacity of \$264.3 million for fiscal year 2013, 5% of which will be allocated to the Tribal Infrastructure Project Fund (TIPF), and the revised application process, which should make it easier for tribal entities to apply for money from the TIPF. The committee discussed at length the propriety of state intervention regarding taxation on tribal lands. Albert J. Lama, chief deputy attorney general,

stressed that the Office of the Attorney General (AGO) is supportive of New Mexico tribes and is seeking to ensure that the statutes regarding collection of escrow are not open to interpretation. Barbara Alvarez, a policy analyst for the IAD, explained that because New Mexico has a state equalization guarantee distribution of public school funding, New Mexico takes credit for 75% of impact aid that specifically makes up for the lack of property taxes on federal trust land. The Alamo, To'hajiilee and Ramah chapters of the Navajo Nation presented status updates, and the committee discussed the need for regional solutions to problems such as juvenile detention facilities in rural areas.

The fourth meeting of the committee was hosted by the Pueblo of Sandia. The pueblo presented the committee with a status update that listed several areas of concern, including federal impact aid funds, water resources and issues of "free play" at the Sandia Casino. The committee focused on problem areas of Indian gaming compacts. Marvin Ginn, executive director of Native Community Finance, discussed concerns of refund anticipation check abuses in Indian country, explaining that often tax preparers will take advantage of refund anticipation loans and may not prepare taxes properly for Native Americans who live on reservations. Christine P. Sims from the UNM American Indian Language Policy Research and Teacher Training Center stressed the importance of developing language immersion programs and dedicating resources to Native American language programs. The committee dedicated part of the fourth meeting to the issue of dental services in tribal communities. Barbara Webber, executive director of Health Action New Mexico, and others presented information about a dental therapist program that has been implemented in Alaska to meet the growing demand for dental services in rural areas. Mark Moores and Dr. Shelly L. Fritz, executive director and president, respectively, of the New Mexico Dental Association, told the committee that an expansion of dental hygienist training and responsibilities would meet the demand for dental services without the implementation of a dental therapist program. Several members of the audience expressed their support for the implementation of a dental therapist program in New Mexico.

The second day of the fourth meeting was held at SIPI and focused on the access and quality of higher education for Native American students. Dr. Sherry R. Allison, president of SIPI, gave an update on the accreditation process for the school, which was placed on candidate status in 2010 and will likely be accredited by 2013. Secretary of Higher Education Garcia presented additional information regarding the new HED funding formula and outlined funding for Pell grants and the New Mexico legislative lottery scholarship. Theresa L. Acker, outreach coordinator for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), outlined the GEAR UP



process and presented information about the outcome of the program. Pamela Agoyo, director of American Indian Student Services for UNM, told the committee that Native Americans comprise 6% of the student body on the main UNM campus. UNM provides funding for a program that allows students to acclimate to college life before their first semester. Justin McHorse, director of the American Indian Program at NMSU, gave the committee a status update on the American Indian Student Center, which has been constructed to house the American Indian Program and to serve as an alternative home for Native American students that attend NMSU.

ISL mining was the exclusive issue addressed during the fifth meeting of the committee. Presenters included the NMED, ENDAUM, geologists from the New Mexico Institute of Mining and Technology (NMT) and representatives of companies that mine uranium, including Uranium Resources, Inc. (URI), a company that has an application for an underground injection control permit under consideration at the NMED. Mr. Schoeppner outlined the NMED's extensive licensing process, which determines the ability of a company to rehabilitate a site to baseline standards, and explained that the water restoration process involves pumping out fluids that have been contaminated and then treating them before injecting them back into the ground. Dr. Dana S. Ulmer-Scholle, associate research professor with the Department of Earth and Environmental Science at NMT, explained the geology of most aquifers and made recommendations that the state take certain actions before allowing ISL mining to occur. Industry representatives included: Richard A. Van Horn, executive vice president of operations at URI; Dr. Daniel Erskine, principal geologist and geochemist at INTERA, Inc.; and Mark S. Pelizza, senior vice president of health, safety, environment and public affairs at URI. These industry representatives elaborated on specific processes involved in ISL mining. Ms. Morgan told the committee that ENDAUM believes ISL mining will have a negative effect on the aquifer and, therefore, on the drinking water that is available in many areas inhabited primarily by Native Americans. Ms. Morgan requested that extensive studies be conducted before ISL mining is allowed. Stephen B. Etsitty, executive director for the Navajo Nation Environmental Protection Agency, told the committee that the proposed URI mining site is located immediately south of Navajo Nation trust land and requested that the legislature carefully consider ISL mining. Mr. Etsitty also requested that if ISL mining is allowed, regulations and protective controls be built into legislation to ensure that the surrounding community and environment are protected from devastation. The committee expressed serious concerns about ISL mining as well as a need for more information and more discussion about this very controversial issue.

At its final meeting, the committee heard reports and considered legislation. Estevan Lopez, director of the Interstate Stream Commission, presented the Office of the State Engineer's 2011 Indian Water Rights Settlement Fund Report and the implication of the enactment of the federal Indian water rights settlements. Walter Dasheno, governor of the Pueblo of Santa Clara, and Michael S. Duvall, secretary of homeland security and emergency management, reported on the status of the Pueblo of Santa Clara after the Las Conchas fire and various flooding incidents. Steven Adelsheim, director of the Center for Rural and Community Behavioral Health at UNM, gave a status update on the suicide prevention clearinghouse created by Senate Bill 417 and enacted on March 31, 2011. Ray Espinoza, director of the Office of Indian Elder Affairs in the Aging and Long-Term Services Department (ALTSD), presented the committee with information regarding Native American seniors in New Mexico. Alan Martinez, deputy secretary for the Veterans' Services Department (VSD), told the committee that the TRD has paid out over \$800,000 in processed claims for the Native American Veterans' Income Tax Settlement Fund, which has left a balance of approximately \$173,000. The committee dedicated a portion of the meeting to the Gaming Control Board and other entities that receive a portion of casino net winnings in order to comply with the gaming compacts. Ms. Morgan presented additional information regarding ISL mining to the committee.

The committee concluded its work for the 2011 interim by endorsing the following legislation for the upcoming legislative session:

- ▶ grant assistance for tribes — creates a program to provide tribes with technical assistance in identifying, applying for and administering federal and private grants;
- ▶ uranium decision-makers conference — makes an appropriation for a decision-makers conference regarding uranium;
- ▶ Native American Veterans' Income Tax Settlement Fund — makes an appropriation to the Native American Veterans' Income Tax Settlement Fund;
- ▶ Rio Arriba adult daycare center — makes an appropriation for a regional adult daycare center in Rio Arriba County;
- ▶ Native American suicide prevention — makes an appropriation for a clearinghouse and technical assistance program on Native American suicide prevention; and
- ▶ promote Fort Sill Apache Tribe economic development — requests the state of New Mexico to promote the cultural and economic development of the Fort Sill Apache Tribe's aboriginal territory in southwest New Mexico.

## INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

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The Investments and Pensions Oversight Committee was created by the New Mexico Legislative Council on May 9, 2011. The committee focused during this interim on actuarial soundness of the trust funds of the Public Employees Retirement Association (PERA) Board, the Educational Retirement Board (ERB) and the Retiree Health Care Authority (RHCA), as well as the investment functions of the PERA, the ERB and the State Investment Council (SIC). The oversight of the PERA, ERB and SIC investment functions included not only an examination of investment policies and returns, but also testimony on the progress of current or pending litigation involving the state's investment or pension funds. The oversight by the legislature of investments and pensions began in 2003, with the creation of the State Permanent Fund Task Force by Senate Joint Memorial 14, and continued pursuant to Senate Joint Memorial 13 of the 2005 session. House Bill 212 of the 2006 session would have created a committee much like the current committee; however, the bill was pocket-vetoed by Governor Richardson. Since 2006, the New Mexico Legislative Council has created the committee and its successors.

The committee's meetings during the 2011 interim addressed a number of issues related to solvency of the retirement funds administered by the PERA and the ERB. The committee received testimony on the projected solvency of the retirement funds, proposals to ensure the long-term solvency of the funds and the actions other states are taking to enhance the solvency of their pension funds. Testimony was given by SIC, PERA and ERB staff on the investment performance of each fund and by the attorney general, investment fund counsel and private plaintiffs on current or pending litigation involving these funds and allegations of "pay-to-play", investment fraud and related matters.

The committee took testimony at its June meeting from the SIC on recent investment performance. The state investment officer also reported that, within the 30 days prior to the June meeting, the SIC filed several lawsuits in both state and federal courts seeking to hold multiple individuals and a partnership accountable for their role in "pay-to-play" and kickback schemes involving the SIC during the period 2003 to 2009.

*The State Investment Council filed several lawsuits in both state and federal courts seeking to hold multiple individuals and a partnership accountable for their role in "pay-to-play" and kickback schemes.*

The PERA and the ERB reported on recent investment performance and the actuarial soundness of their respective pension funds. The general counsel for the PERA addressed the committee regarding the PERA's fund soundness. The chief investment officer for the PERA updated the committee members on investment performance as of May 31, 2011.

The deputy director of the ERB addressed the actuarial soundness of the ERB's retirement fund and the investment performance regarding that fund for the 12 months ending on March 31, 2011.

At the July 27 meeting, the committee received testimony from a panel of experts on proposals to maintain the long-term solvency of the PERA and the ERB pension funds. That panel included the executive director of the PERA and the deputy director of the ERB, as well as officers of associations representing state employees, teachers, firefighters and police. The committee also heard from a panel of the investment officers of the SIC, the PERA and the ERB on the establishment of realistic earnings goals for their respective investment funds.

Committee staff reported on proposed changes by the Governmental Accounting Standards Board in pension accounting and financial reporting standards for state and local governments and on the changes that other state legislatures are making to their respective pension plans and the lawsuits being brought by employee groups to challenge the constitutionality of those changes.

A panel of experts updated the committee on the progress of current or pending litigation involving the state's investment or pension funds and allegations of "pay-to-play", investment fraud or related matters. That panel included the state attorney general, the state investment officer and the general counsel for the ERB, as well as a private plaintiff and his counsel.

At its August 31 meeting, the committee heard testimony from the executive directors of the PERA and the ERB on the impact of various retirement benefit plan changes on the solvency of their respective pension funds. The committee also heard from the executive director of the ERB and a number of teachers on the impact on ERB fund solvency and teacher recruitment of return-to-work provisions currently in statute.

At its October 27 meeting, the committee heard a progress report from the PERA and the ERB on their efforts to develop board-approved proposals to reduce benefits and/or increase employer and employee contributions to ensure the solvency of their respective pension funds, which would be brought to the committee for endorsement prior to the 2012 legislative session. The RHCA also discussed with the committee various plan changes that could ensure the solvency of the health insurance program for program members. The SIC informed the committee as to possible proposed

legislation to be brought to the committee for endorsement.

An additional meeting of the committee was approved by the New Mexico Legislative Council for December 2, 2011. The committee heard from a panel of experts on the impact on the Severance Tax Permanent Fund (STPF) and public school construction and other capital projects financed with severance tax bonds of proposals to increase the amount of severance tax revenue flowing to the STPF. The panel included the state investment officer, the director of the Public School Capital Outlay Council, the director of the Public School Facilities Authority (PSFA) and the director and bond counsel of the State Board of Finance.

The committee heard final legislative proposals from the ERB, the PERA and committee members to enhance the solvency of pension funds; proposals from the SIC to increase its ability to invest in international equities; and a proposal from the State Treasurer's Office to more clearly define the duties and responsibilities of the state treasurer with regard to receipt, payment and custody of state funds.

The committee voted at the December 2, 2011 meeting to endorse the following legislative proposals.

- ▶ A bill to amend the Judicial Retirement Act to have employer contributions to judicial and magistrate retirement funds come from the general fund and to have the portion of civil docket and jury fees that had previously been deposited to the retirement funds deposited to the general fund. This bill would also increase contributions to the retirement funds.
- ▶ A bill to allow retired PERA members to return to work temporarily as precinct board members for a municipal election or an election covered by the Election Code without suspending their pension benefits.
- ▶ A memorial requesting the creation of a task force to evaluate the solvency of the municipal and state public safety members' retirement plans and assess options and make recommendations to the committee no later than October 1, 2012 for changes in those plans to ensure their long-term solvency.
- ▶ A memorial requesting the PERA to assess options and to recommend changes to its retirement plans to reduce unfunded retirement benefit liabilities with a goal of bringing the ratio of fund assets to liabilities to 100% by 2041 and to report the recommended changes to the appropriate interim committee by October 1, 2012.
- ▶ A bill to amend the Educational Retirement Act to establish a minimum retirement age of 55

for members retiring on or after July 1, 2022, to reduce the annual cost-of-living adjustment or retirement annuity payments by 12.5% for existing and future retirees and to change member and employer contribution rates to the Educational Retirement Fund.

- ▶ A bill to increase the percentage of the STPF allocated to the Small Business Investment Corporation from one to two and to require that money allocated to the corporation from the STPF that is not committed within three years of the allocation be returned to the STPF.
- ▶ A bill to change the membership of the SIC by replacing the elected officials with members appointed by the elected officials; removing as a member the chief financial officer of a state institution of higher education; and replacing the four members appointed by the New Mexico Legislative Council with one member each appointed by the president pro tempore of the senate, the minority floor leader of the senate, the speaker of the house of representatives and the minority floor leader of the house of representatives, all appointed with the advice and consent of the senate. The bill would also increase from two to four the public members appointed by the governor, with the requirement that no more than two of the four be from the same political party. This bill also provides that the chair and the vice chair of the SIC be elected. The bill also changes the powers and duties of the SIC, the state investment officer and staff and certain reporting deadlines.
- ▶ A joint resolution to amend Article 12, Section 7 of the Constitution of New Mexico to increase the standard of care exercised by the state investment officer in investing the land grant permanent funds and removing the constitutional limitation on investment of the funds in international securities, leaving that limitation to be set only in statute by the legislature.
- ▶ A bill to impose a limit of 25% on the portion of the book value of the land grant permanent funds that may be invested in international equities at any single time. The bill would become effective upon the certification of the constitutional amendment discussed under the previous item that would remove the constitutional limitation on international investing.
- ▶ A bill to clarify the duties and responsibilities of the state treasurer regarding the deposit and accounting of public money.

## LAND GRANT COMMITTEE

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During the 2011 legislative interim, the Land Grant Committee held five meetings. Meetings were held in Santa Fe twice, and in Abiquiú, Cebolleta and Cañón de Carnué. The committee also toured the Abiquiú, Cebolleta, Cañón de Carnué and Cañones land grants.

Topics addressed this interim included private property claims to land grant patents and clouded titles in Taos County; providing political subdivision status to non-patent land grants and partitioned grants; the status of the Tierra Amarilla Land Grant's mineral rights and Wind River Energy's Milagro Project; the return of common lands in the San Joaquin del Rio de Chama Land Grant; the history of the Juan Tafoya Land Corporation; boundary negotiations between the United States Forest Service and the Abiquiú and Truchas land grants; the land grant risk management process; film industry opportunities for land grants; the land grant demonstration project at the Santo Domingo de Cundiyo Land Grant; land grant legal training and dispute resolution; the acquisition by the Cebolleta Land Grant of the State Game Commission-owned Marquez Wildlife Area; the process for getting tax credits for donations to land grants; the Land Grant Council; and land grant studies programs.

The committee endorsed the following nine pieces of legislation for the 2012 legislative session, three of which were endorsed by the committee the previous year:

- ▶ a bill, which was also endorsed by the committee last year, authorizing the Land Grant Council to expend private and federal funds to assist community land grants-mercedes that are not political subdivisions of the state;
- ▶ a bill, which was also endorsed by the committee last year, allowing the Town of Tecolote Land Grant-Merced to be governed under the provisions of Chapter 49, Article 1 NMSA 1978 as a political subdivision of the state;
- ▶ a bill, which was also endorsed by the committee last year, moving the official land grant registry from the Office of the Secretary of State to the Land Grant Council office;
- ▶ a bill appropriating \$300,000 to start a land grant studies program at the UNM School of Law;
- ▶ a bill granting political subdivision status to the San Antonio del Rio Colorado Land Grant-Merced;
- ▶ a joint memorial requesting that the federal government negotiate with the state and

- representatives of displaced land grant heirs for the return of land grant lands;
- ▶ a joint memorial requesting that the United States Forest Service perform a boundary survey of the Pueblo de Abiquiú Land Grant-Merced and return lands according to the results;
- ▶ a joint memorial requesting that the United States Forest Service perform a boundary survey of the Nuestra Señora del Rosario San Fernando y Santiago Land Grant-Merced and return lands according to the results; and
- ▶ a joint resolution approving the sale of the State Game Commission-owned Marquez Wildlife Area to the Cebolleta Land Grant-Merced.

In addition, three pieces of legislation endorsed by the committee for the 2011 legislative session were signed into law. House Bill 81 (Laws 2011, Chapter 96) provides that the common lands owned by land grants governed as political subdivisions of the state shall not be considered to be or treated as state lands and authorizes the boards of trustees of such land grants to enter into agreements with other political entities, including the governments of Indian nations, tribes or pueblos, for the protection of cultural resources located within the common lands of a community land grant. Land grant board of trustee election procedures are clarified in House Bill 170 (Laws 2011, Chapter 112), which gives land grants the option of providing staggered terms for board members. House Bill 278 (Laws 2011, Chapter 68) grants the Town of Atrisco Land Grant-Merced recognition as a political subdivision of the state, and the land grant-merced will now be governed pursuant to the provisions of Chapter 49, Article 1 NMSA 1978.

## LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

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The Legislative Health and Human Services Committee focused on three major areas during the interim: Medicaid; health care reform implementation; and agency oversight.

The HSD cabinet secretary, staff and contractors presented during the interim on the HSD's proposal to redesign the state's Medicaid program and to update its information technology systems to accommodate the Medicaid program changes, as well as a possible state health insurance exchange. The committee received testimony from experts, stakeholders, community advocates and the general public on elements of the proposed Medicaid redesign, though the HSD did not commit to any



concrete features of the redesign during the interim.

The committee reviewed the actions taken to implement the federal Patient Protection and Affordable Care Act of 2010 (PPACA). It held extensive hearings on the possibility of creating a state health insurance exchange. It heard testimony from community stakeholders and the New Mexico Office of Health Care Reform, as well as other state agencies and out-of-state experts, on PPACA-inspired health care delivery and finance changes; health insurance mandates and rate review; changes to the New Mexico Insurance Code and the potential for enacting legislation pursuant to the PPACA to create new health care coverage for low-income individuals who are not eligible for Medicaid; attendant care services for disabled individuals eligible for Medicaid; and a nonprofit health care coverage plan to be offered on a state health insurance exchange.

In fulfillment of the committee's oversight role, the cabinet secretaries and staff of the ALTSD, the CYFD, the DOH, the HSD and the Workforce Solutions Department (WSD) presented status reports and legislative recommendations before the committee throughout the interim.

The committee also reviewed matters relating to: Native American health; the state's substance abuse epidemic; health care work force development; innovations in health care delivery and finance; public health; human services needs and programs; long-term services; teen pregnancy; prescription drug affordability; and recent proposed changes to the state's tort and malpractice laws.

In addition to holding three meetings at the State Capitol in Santa Fe, the committee visited and heard public comment in the Pueblo of Taos; in the Town of Taos, hosted by the UNM-Taos campus; in the Town of Silver City, hosted by Western New Mexico University; and in the City of Albuquerque, where it held two days of hearings at the South Valley Family Health Commons, hosted by First Choice Community Healthcare.

## **MILITARY AND VETERANS' AFFAIRS COMMITTEE**

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The Military and Veterans' Affairs Committee was originally created by statute for the 2009 interim and was permanently reauthorized during the Second Session of the Forty-Ninth Legislature. Pursuant to Section 2-20-2 NMSA 1978, the committee holds hearings relating to military and veterans' issues and creates an annual report, with recommendations for any necessary legislation, prior to each session of the legislature. The committee is also tasked with making legislative

recommendations to Congress and regulatory recommendations to the United States Department of Veterans Affairs and the United States Department of Defense.

The committee held six meetings during the 2011 interim. At its initial meeting, the committee developed a work plan identifying the specific topics to be explored and discussed during the 2011 interim. The committee also reviewed legislation it had endorsed in the past and other legislation related to military and

veterans' issues. The committee heard testimony from Major General Kenny C. Montoya, adjutant general, Department of Military Affairs, regarding the priorities and initiatives of the

department, including the National

Guard's mission to provide military support to civil authorities for emergency assistance and disaster relief missions, and the National Guard's involvement in state activities that support local communities, such as the summer camp it runs for New Mexico youth. The committee also heard testimony from Secretary of Veterans' Services Timothy L. Hale, who provided the priorities and initiatives of the VSD, including its main goal of assisting veterans and their families with establishing the privileges they have earned through military service and its main areas of focus for veterans, which are business, education and general services. The final presentation at the initial committee hearing was from Hanson Scott, brigadier general (ret.), director, Office of Military Base Planning and Support, who provided testimony regarding New Mexico's military base planning programs, highlighting the current operations and capabilities at Kirtland Air Force Base and Holloman Air Force Base and a transition at Holloman that should occur due to a restructuring of the F-16 wings at that base. Brigadier General Scott also addressed the committee about the possibility of the Base Realignment and Closure Commission undertaking another round of base closures, and he noted that while New Mexico has been successful in the past in protecting the state's military installations from closure, it may be more difficult this time to protect bases from the list of possible closure sites.

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At its second meeting, the committee heard testimony from Carole Donsbach, R.N., M.P.H., manager of the Women Veterans Program, and Diane T. Castillo, Ph.D., coordinator of the Women's Stress Disorder Treatment Team in the New Mexico Veterans Administration Health Care System (VAHCS), concerning health care for female veterans. The mission of the VAHCS is to promote and

provide all health care services while developing an optimal continuum of health care services for female veterans. These services include mental, psychological, prenatal, preventative, oncological, diagnostic and rehabilitative health care. The VAHCS provides a comprehensive health care clinic, devoted entirely to providing female veterans with care in each of these areas. The committee also heard from Rose James, program director at the New Mexico Veterans' Integration Center (VIC), concerning the integration of homeless and returning veterans into New Mexico community life. The VIC offers quality employment training, housing and supportive services based on a continuum of care to homeless veterans, and it is seeking funding from a variety of sources to increase the number of beds

*Kirtland Air Force Base is undertaking major steps to rectify and clean the environmental damage caused by jet fuel leaks in the Albuquerque area.*

available to homeless veterans from 50 to 100 and to expand the program to offer emergency shelter to displaced veterans. The committee next heard from Alan T. Martinez, VSD deputy secretary, and Brent

M. Eastwood, division director of the Office of International Trade in the EDD, as to the development of a veterans business incubator program pursuant to House Memorial 59 (2011), which called for a study of the feasibility of creating or implementing a veterans business incubator program in New Mexico. It was reported that the most efficient way to conduct such a study would be to study other business incubator programs in the state, form a network of veteran-owned businesses to inform the public about the possibility of a veterans business incubator program and gauge interest throughout the state before undertaking steps to create an incubator. Thomas F. Berardinelli, director of staff, 377th Air Base Wing, Kirtland Air Force Base, provided testimony relevant to the status, economic impact and current operations under way at the air base. The facility has a large economic impact in the state, accounting for \$7.8 billion brought into the state by way of direct employment and contracts with local contractors. Mr. Berardinelli addressed the energy and environmental impacts of the air base, saying there is a plan to reduce the base's energy needs and better secure the supply of energy by developing renewables that are housed on the base. He also stated that the air base is undertaking major steps to rectify and clean the environmental damage caused by jet fuel leaks in the Albuquerque area.

The first presentation of the committee's third meeting was from Chuck Howe, president, and Candace Green, program director, National Veterans Wellness and Healing Center, who spoke on the center's programs and successes and discussed the center's holistic approach to treating posttraumatic stress disorder (PTSD), including alternative modalities and therapies. Mr. Howe noted that the Angel

Fire Resort is donating land to the center to build a year-round campus, and when the campus is completed, the center will be able to offer services for PTSD treatment, train personnel for other states, develop programs for first responders and devise specialized programs for female veterans who have been the victims of trauma. The committee also heard a presentation from Chief Warrant Officer Amanda Pagan, New Mexico Army National Guard, and Colonel Joe M. Romero, New Mexico Army National Guard state judge advocate, on House Bill 108 (2011) and the impact of deployment on child custody. Members of the committee expressed strong support for reintroducing the legislation. Tim Chelpaty, Otis Ferguson and Adolfo Vasquez of Veterans Office Solutions, Inc. (VOS), gave a presentation regarding the business plan of VOS, which would employ veterans to refurbish used furniture for use by the federal government, and the need for financial support to get the enterprise started. Marilyn Melendez Dykman, director of the Veterans Resource Center (VRC), and Maria Veronica Yzeta gave a presentation on VRC programs for student veterans attending UNM and the VRC's mission to provide support for student veterans and their dependents by increasing veterans' access and admission to higher education and removing barriers to veterans' education. The final presentation at the meeting was from Brandon Trujillo, director, and Nancy Soto, program specialist, both from the New Mexico State Approving Agency of the HED, regarding the impact of recent federal legislation that changes the role of such agencies from being approving bodies that can prevent veterans from starting a program that will not be covered by GI Bill benefits to being bodies that only perform compliance surveys.

At the committee's fourth meeting, Secretary of Taxation and Revenue Demesia Padilla and Deputy Secretary of Veterans' Affairs Martinez offered a briefing on the Native American Veterans' Income Tax Settlement Fund. The purpose of the fund is to provide refunds to Native American veterans who were domiciled on tribal lands and had New Mexico personal income taxes improperly withheld from their military pay during periods of active duty. The TRD and the VSD are working to ensure that all money from the fund is used to identify and provide refunds to any Native American veterans who had taxes improperly withheld. Tom C. Wray, project manager for the SunZia Southwest Transmission Project, reported on the status of the project, which would install energy transmission lines near White Sands Missile Range, and on recent discussions with the Bureau of Land Management regarding the project. Deputy Secretary Martinez and Minda McGonagle, lobbyist for Veterans and Fraternal Non-Profit Clubs of New Mexico, Inc. (VFNP), discussed the problems that VFNP clubs are having with the Gaming Control Board (GCB), including what was described as

overwhelming paperwork required to be submitted to the board, overly strict requirements for the paperwork and ever-changing policies issued via policy letters rather than by rule. Deputy Secretary Martinez also made a presentation regarding House Joint Memorial 10 (2010), which requests that the VSD study expanding statutory eligibility to receive funding from the Veterans' National Cemetery Fund to include the Fort Bayard National Cemetery. Dennis H. Felipe of the Pueblo of Acoma and Marvin Trujillo, Jr., veterans director of the Pueblo of Laguna, made presentations regarding the issues and concerns of the veterans of their pueblos. Finally, Keith Little, president, and Wynette Arviso, Navajo Code Talkers Foundation, made a presentation on the Navajo Code Talkers Museum and Veterans Center. The mission of the museum and center is to preserve and pass on the legacy and language of the Navajo code talkers while educating the public and providing a place of refuge, renewal and healing for all veterans and military personnel and their families.

The committee's fifth meeting opened with an overview from Secretary Hale and George Marnell, director of the New Mexico Veterans Affairs Medical Center, of the state's current capabilities to provide long-term veteran care. The next presentation was an update of the New Mexico State Veterans' Home by Brad McGrath, chief of the DOH Facilities Division, and Donna Deason, assistant

*The presenter warned of a coming health care crisis due to the growing number of veterans from recent conflicts reentering civilian life at a time of tightened budgets on both state and national levels.*

administrator of the New Mexico State Veterans' Home, which is the state's only fully dedicated home for veterans, their spouses and Gold Star parents. Daniel J. Stoddard and Suzette Lindemuth, president and vice president, respectively, of Senior

Community Services (SCS), gave a presentation on the SCS facility, stating their hopes that the SCS facility will be used to provide veterans' services for the state. Armando Armador, Vietnam Veterans Chapter 358, gave a presentation on the needs of Vietnam veterans, as well as veterans of other wars, in Grant County and throughout New Mexico, especially for treatment of PTSD. The next presentation provided the status of the state's capabilities to provide PTSD treatment to veterans. A presentation led by Harrison Kinney, director, Behavioral Health Services Division of the HSD, updated the committee on the work of the Interagency Behavioral Health Purchasing Collaborative. Mr. Kinney discussed the importance of addressing PTSD and warned of a coming health care crisis due to the growing number of veterans from recent conflicts reentering civilian life at a time of tightened budgets on both state and

national levels. The final presentation of the meeting was from Dr. Mark D. Wiederhold, M.D., president of Virtual Reality Medical Center (VRMC), concerning a new technique he and his colleagues have developed that uses a virtual reality device to treat PTSD. A pilot study conducted by the VRMC showed an overall 80% success rate of significant reduction in PTSD, with 100% reduction in anxiety and depression.

At the committee's final meeting, representatives from Cannon Air Force Base, led by Colonel Larry Munz, vice commander of the 27th Special Operations Wing, provided a briefing on the status of the Low Altitude Training Area (LATA) proposed for northern New Mexico and southern Colorado, including proposed routes, types of aircraft to be utilized and the Draft Environmental Assessment for LATA produced in August 2011. Officials from the air base held numerous public meetings on LATA throughout September and October and were in the process of compiling the comments received. Secretary Hale then gave a presentation on the strategic plan of the VSD, including its strategic goals of improving awareness of and access to VA benefits, building on community and interagency partnerships to bridge gaps in VA benefits and becoming the most veteran-friendly state for veteran-owned businesses, benefits and community support. The final presentation was from David L. Norvell, chair, GCB, Frank A. Baca, executive director, GCB, and Tom Fair, Auditing and Compliance Division, GCB, regarding the issues reported by the VFNP at the committee's fourth meeting. Prior to adjournment, the committee endorsed the following for the upcoming legislative session:

- ▶ a bill enacting the Service Member Child Custody Act;
- ▶ a bill making an appropriation for a feasibility and market study for a Navajo Code Talkers Museum and Veterans Center;
- ▶ a bill making an appropriation to study the need for a state cemetery for members of the United States National Guard and Reserves;
- ▶ a bill making an appropriation for a pilot program to treat veterans with PTSD with a virtual reality device;
- ▶ a memorial requesting the VSD to collaborate with various agencies and organizations to study the unmet behavioral health and primary health care needs of veterans in the state;
- ▶ a memorial requesting the VSD to collaborate with various agencies and organizations to study the unmet behavioral health and primary health care needs of veterans in the southwest portion of the state; and

- a capital outlay request to plan, design and renovate the Yucca Lodge at Fort Bayard for use as a veterans' PTSD clinic.

## MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE

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The Mortgage Finance Authority (MFA) Act Oversight Committee held five meetings during the 2011 interim. The June, August, October and November meetings were held in Albuquerque at the MFA office, while the July meeting was held in Farmington.

At its first meeting, the committee was addressed by Raúl E. Burciaga, director of the Legislative Council Service. Mr. Burciaga explained that, in accordance with policies established by the New Mexico Legislative Council, and as was the case during the 2010 interim, the number of interim committee meetings and the travel associated with the meetings would be limited. He reminded members that budget concerns played a role in the committee meeting schedules. The current budget constraints impacting both the state of New Mexico, as well as its agencies and quasi-agencies, was a topic revisited by the MFA Act Oversight Committee several times during the interim. Additionally, at the committee's second meeting, the MFA staff reported on the topic as it was projected to impact the agency's work in the foreseeable future. Specifically, Jay Czar, executive director for the MFA, informed committee members that the MFA had lost its contract with the Section 8 Project-Based Housing Assistance Program, a contract administered through the United States Department of Housing and Urban Development. The committee members remained informed on the issue by Mr. Czar throughout the interim. Eventually, the loss of the contract was appealed by the MFA. Additionally, on November 15, 2011, Mr. Czar apprised the chair and co-chair of the committee of the MFA's request for an attorney general's opinion as to whether an out-of-state public housing authority, or its instrumentality, may act as a public housing authority in New Mexico. The MFA has not yet received the attorney general's opinion.

Periodically throughout the interim, the MFA staff advised the committee of the progress in the MFA's expenditure of the federal American Recovery and Reinvestment Act of 2009 (ARRA) funding. The ARRA money was used to help fund the MFA's weatherization, homeless prevention and tax credit assistance programs. Committee members frequently voiced positive opinions and approval for the work of the MFA, particularly the agency's bonding capacity, financial status and use of the federal

ARRA funds. However, for comparison purposes, and to ensure proper oversight and efficiency of operations, committee members expressed a continued desire for information regarding similar housing agencies operating in other states.

The MFA staff reported throughout the interim on the use and status of the ARRA funds. In 2009, the MFA received \$27 million of ARRA funds for the Weatherization Assistance Program. Since then, the MFA staff has reported that the MFA's partners have weatherized more than 4,000 New Mexico homes and that the authority is on track to spend all of its awarded stimulus funds by March 31, 2012. The committee's August meeting in Farmington provided the opportunity for the committee members to see firsthand the

work involved with the ARRA-funded Weatherization Assistance Program. Members toured a Farmington home that was in the process of receiving weatherization improvements, including

*Mortgage Finance Authority partners have weatherized more than 4,000 New Mexico homes, and the authority is on track to spend all of its awarded stimulus funds by March 31, 2012.*

an energy audit designed to assess the energy usage and losses existing in the home. Members also met with the home's resident who, as a low-income homeowner, qualified for the weatherization assistance.

A frequent topic of interim committee discussions involved the federal Tax Credit Assistance Program (TCAP) administered through the MFA. The MFA staff reported that the ARRA provides \$2.25 billion of grant funding to cover gaps in financing for low-income housing construction. The MFA uses the TCAP funds for tax credit properties that received credit awards in 2007, 2008 and 2009. During the August meeting in Farmington, the committee members toured a low-income, multi-family TCAP property, La Terraza Apartments. Members were generally impressed by the property design and its centralized location. Additionally, through discussions with property managers and residents regarding the long waiting list for the apartments, members acknowledged the need for and value of similar properties.

At its fifth and final 2011 interim committee meeting, the MFA staff presented the agency's legislative proposals for the committee's consideration. Among the legislative initiatives was a bill that would transfer the oversight of the Regional Housing Authority from the MFA to the Department of Finance and Administration (DFA). A bill with the same provisions was proposed by the MFA and endorsed by the committee for the 2011 legislative session; however, that bill was not passed. The MFA proposed the bill again for the 2012 legislative session because the agency currently does not



receive any funding to support its statutorily mandated oversight of the Regional Housing Authority. Additional legislative proposals included:

- ▶ a \$250,000 appropriation for the oversight of the Regional Housing Authority;
- ▶ a \$5 million appropriation to the New Mexico Housing Trust Fund;
- ▶ a \$1 million appropriation to the NM Energy Smart Program;
- ▶ a \$1 million appropriation for homebuyer education and foreclosure mitigation; and
- ▶ a \$500,000 appropriation for an emergency repair fund.

## NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

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The committee met five times in the 2011 interim to carry out its statutory duties to monitor and oversee the New Mexico Finance Authority (NMFA), the Border Authority, the Spaceport Authority and the New Mexico Renewable Energy Transmission Authority (RETA). The committee examined the mission, organizational structure, operations budget, activities and projects of all four authorities.

In its analysis of the NMFA, the committee focused on how the NMFA can utilize its programs and resources to increase economic development in New Mexico. The committee took testimony from NMFA management and board members regarding the NMFA bond rating and funds and programs, including new markets tax credits, the Public Project Revolving Fund (PPRF), the Economic Development Revolving Fund, the Water Project Fund, the Local Transportation Infrastructure Fund and the Colonias Infrastructure Trust Fund.

*The committee considered the serious projected shortfalls in transportation funding and the various sources of road fund revenue.*

The committee reviewed transportation infrastructure needs in New Mexico and heard testimony regarding the outlook for state and federal transportation funding. The committee considered the serious projected shortfalls in

transportation funding and the various sources of road fund revenue, and heard a status report on the GRIP bond program.

The Border Authority reported on the status of all the border crossings, on the Union Pacific Railroad Project at Santa Teresa and on the authority's efforts to expand economic development in the

border region.

The committee toured the spaceport and heard from the Spaceport Authority regarding its efforts to attract new business and industry to New Mexico. Virgin Galactic representatives also reported on opportunities being brought to the southern part of the state by spaceport development.

The RETA briefed the committee on its draft rule defining RETA projects, reviewed the Senate Memorial 44 study and updated the committee on a number of renewable energy transmission development projects currently being studied in New Mexico.

The committee endorsed seven pieces of legislation for introduction during the 2012 legislative session, including:

- ▶ a \$2 million appropriation from the PPRF to the Drinking Water State Revolving Loan Fund;
- ▶ a bill authorizing 71 projects to be funded through the PPRF;
- ▶ a bill authorizing projects approved by the Water Trust Board to be funded through the Water Project Fund;
- ▶ a bill to expand the purpose of the Local Government Planning Fund to include infrastructure and energy audits;
- ▶ a \$1 million appropriation from the PPRF to the Local Government Planning Fund;
- ▶ a bill authorizing the NMFA to seek certification as a community development financial institution; and
- ▶ a bill clarifying and expanding the application of the Space Flight Informed Consent Act.

## PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

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As the "direct descendent" of several task forces that were created as a result of the 1999 *Zuni* lawsuit (*The Zuni Public School District et al. v. The State of New Mexico et al.*, CV-98-14-11), the Public School Capital Outlay Oversight Task Force is the entity charged by statute to monitor the implementation of the standards-based process established in provisions of the Public School Capital Outlay Act, the Public School Capital Improvements Act and the Public School Buildings Act; to monitor the revenue streams that fund the standards-based process; to oversee the work of the PSFA; and to make annual recommendations related to the implementation of the standards-based public

school capital outlay process to the legislature and the executive before the beginning of each legislative session.

The task force held its statutorily determined four, one-day meetings in Santa Fe, in addition to its June 10 organizational meeting. Full task force meetings were held on July 28, September 2, October 5 and December 19. The task force also held two meetings of a subcommittee with membership from the task force and the construction industries community appointed by the task force co-chairs. The subcommittee meetings were held on October 17 and November 10 in Santa Fe pursuant to language in Laws 2010, Chapter 104, which states, in pertinent part, that the task force "shall continue...studying issues relating to performance-based procurement for public school capital outlay projects."

The task force began its eighth year of overseeing the implementation of the public school capital outlay standards-based process with a brief review of the work of the 2010 interim, a review of the *Zuni* lawsuit, a review of the Public School Capital Outlay Council 2010 annual report and a summary of the status of task force-endorsed legislation. By consensus, the task force approved the New Mexico Legislative Council's appointment of Representative Rick Miera and Senator Cynthia Nava to serve as co-chairs.

Two of the task force's policy recommendations were enacted by the 2011 legislature and signed into law by the governor.

- ▶ Laws 2011, Chapter 11, Sections 1 and 2 (HB 113) amends the Public School Capital Improvements Act (also called SB 9) and the Public School Buildings Act (also called HB 33) to require all locally chartered or state-chartered charter schools expecting a state distribution of property taxes to report to the PED and its chartering authority, no later than December 1 of each calendar year, the purposes for which the expected distribution will be expended and to report again, by January 31 of the following calendar year, the purposes for which the distribution was expended and the amounts expended for each purpose.
- ▶ Laws 2011, Chapter 69 (HB 283) amends several sections of law relating to public school capital outlay to exempt school districts from seeking State Board of Finance approval when leasing facilities to a charter school; to prohibit new charter schools from opening and existing charter schools from relocating to a facility that does not have a facilities condition index of at least average condition for all New Mexico public schools for that

year; and to prohibit the Public School Capital Outlay Council from making lease-purchase grants to charter schools without approved lease-purchase agreements in place.

Two other task force-endorsed bills did not pass — one that would have increased the minimum contract amount for which a subcontractor must be bonded from \$125,000 to \$250,000 and another that would have clarified rate determination on a construction manager-at-risk construction contract. For the past five years, the task force has endorsed various pieces of legislation, none of which passed, to eliminate or modify the statutory requirement for the bonding of subcontractors on public school projects. In response to both continued concerns and a section of the 2010 task force "omnibus" bill, the co-chairs appointed a subcommittee consisting of task force members, representatives from the General Services Department and the PSFA, legislative staff and representatives from a variety of construction industries. The subcommittee met on October 17 and November 10 in Santa Fe to bring forth recommendations for the task force's consideration.

Members who were present at the final meeting of the subcommittee agreed upon a number of recommendations, only one of which requires legislative action — amending the Procurement Code to clarify the use of "best and final offer" in relation to requests for proposals for construction, maintenance services and repairs (Section 13-1-115 NMSA 1978). Other recommendations related to changes in PSFA guidelines and the New Mexico Administrative Code, neither of which requires legislative action. Task force members agreed to follow up on these changes during the 2012 interim.

As has been the case in each interim since the establishment of this task force's immediate predecessor in 2001, charter school facility issues were a topic of discussion at every task force meeting; however, the majority of the November 29 meeting was devoted to this issue. The task force heard from PED officials, representatives from the New Mexico Coalition for Charter Schools and a member of the Public Education Commission about specific concerns. In response to these concerns, the task force considered two bills dealing with charter school facility issues: (1) a proposed bill that would continue the existence of the statutory Charter School Capital Outlay Fund and clarify that it is a nonreverting fund; and (2) a proposed bill to amend the Public School Buildings Act to allow mill levy proceeds to be used to meet local match requirements for Public School Capital Outlay Act grants.

Making the New Mexico School for the Blind and Visually Impaired (NMSBVI) and the New Mexico School for the Deaf (NMSD) eligible for grants and the conditions for their eligibility for Public School Capital Outlay Act grants were agenda topics at the July 28, September 2, October 5 and December 19 meetings. Task force members made it clear during the 2011 interim that the task force

was in support of the development of adequacy standards to determine funding requirements for these two constitutional special purpose schools. Working on an accelerated schedule and working together

*The task force voted to allow the Public School Capital Outlay Council to allocate approximately \$12 million in deficiency correction funds to address immediate health and safety issues at the New Mexico School for the Deaf and the New Mexico School for the Blind and Visually Impaired.*

with legislative staff and appropriate staff members from the two schools, PSFA staff members were able to provide the task force the opportunity to review and comment on proposed statutory and rule changes that will eventually make the NMSBVI and the NMSD eligible to participate in the standards-based process. The task force also

voted to allow the Public School Capital Outlay Council to allocate approximately \$12 million in deficiency correction funds to take care of immediate health and safety issues at both schools. In terms of proposed legislation, the task force considered endorsement of a bill that would allow the two constitutional special purpose schools to be a part of the standards-based process.

The final meeting of the task force, held on December 19, coincided with extreme weather conditions throughout the Southwest that kept the task force from having a quorum for its final meeting and from endorsing bills. Representative Miera proposed that the task force, acting as a subcommittee, discuss the proposed legislation and make subcommittee recommendations for endorsement. He then requested that, before the legislative session, staff forward copies of the subcommittee-approved legislation to members not present at the December 19 meeting and poll these members about endorsement of these bills. The bills endorsed by the task force acting as a subcommittee amend:

- ▶ the Public School Capital Outlay Act to repeal the 2012 repeal of the Charter School Capital Outlay Fund and repeal the language regarding reversion of unencumbered balances in the fund;
- ▶ the Public School Capital Outlay Act to make the NMSBVI and the NMSD eligible to participate in the Public School Capital Outlay Act standards-based process and provide for funding sources for the two schools to meet local match requirements;
- ▶ the Public School Buildings Act to allow mill levy proceeds to be used to meet local match requirements for Public School Capital Outlay Act grants; and
- ▶ the Procurement Code to clarify the use of "best and final offer" as it relates to requests

for proposals for construction, maintenance services and repairs.

## RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

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The Radioactive and Hazardous Materials Committee is a statutory committee created by the legislature in 1979 primarily to act as a liaison between the New Mexico Legislature and the United States Department of Energy (DOE) on issues related to the Waste Isolation Pilot Plant (WIPP), which is the country's only deep geologic repository for the permanent disposal of defense-generated transuranic waste (TRU) — radioactive waste left over from research and production of nuclear weapons. WIPP has a significant impact on southeast New Mexico, with a fiscal year 2011 budget of \$220 million and over 1,000 employees. The location of WIPP near Carlsbad in southeast New Mexico was decided upon largely because of the presence of thick beds of salt deposits deep underground. Salt beds provide a stable geology and lack sufficient water to foster off-site migration of waste material or radioactivity. The plastic quality of salt allows for it to close in on the waste. WIPP has received over 10,000 shipments amounting to a volume of waste disposed of at WIPP of over 78,000 cubic meters since the facility's opening 25 years ago.

During the 2011 interim, the committee received updates on WIPP operations, including a proposed WIPP transportation route change that is critical to the city of Carlsbad due to the presence of a potential sinkhole immediately adjacent to the current WIPP route, U.S. 285. The committee spent much time on WIPP and WIPP-related topics, including the status of the Carlsbad Environmental Monitoring and Research Center (CEMRC), which depends on federal appropriations and is housed on the New Mexico State University campus in Carlsbad. The CEMRC is a world-class facility in environmental monitoring that provides objective environmental monitoring, conducts research, provides training, develops measurement methods and establishes a health environmental database. The CEMRC is measuring volatile organic compounds from WIPP underground, which indicates safe operation of WIPP and determines that there is no off-site emissions from the WIPP site.

One of the foci of attention this year is legislation sponsored by Congressman Steve Pearce to change the legislation governing WIPP to allow for an additional waste stream to be accepted at WIPP. Congressman Pearce's proposal, H.R. 2367, the federal Government WIPP Extension Act of 2011, would amend the classification of wastes allowed at WIPP. The purpose of his bill is to allow WIPP to

dispose of non-defense, government-owned TRU in addition to the waste it already accepts. The bill would not allow WIPP to accept private commercial waste, so the kind of waste WIPP accepts would not change. The waste in question has the same physical and chemical characteristics as the waste now certified for acceptance at WIPP. The difference is that one waste stream is overseen by the Nuclear Regulatory Commission and the other by the DOE.

The committee was also keenly interested in the status of cleanup and shipments of waste from Los Alamos National Laboratory (LANL). The most important news from LANL is the near completion of the cleanup of Technical Area 21 (TA 21). The federal American Recovery and Reinvestment Act of 2009 funding that was received less than two years ago has allowed LANL to focus on cleaning up TA 21, which is located across from the airport on the main road into the city. This effort created or saved more than 400 jobs, demolished 24 buildings, provided small business subcontracts and achieved compliance on drilling ground water monitoring wells. The one project remaining is at Material Disposal Area B, which needs to be cleaned up and returned to residential standards. Remediation work was done safely, with no personnel injured from contamination and no release of radioactive contamination.

Also relative to LANL, the committee heard testimony on LANL's budget and employment update and the impact of the 2011 fires on the Los Alamos area. Since the committee is inherently interested in the radioactive materials waste stream, it has also addressed nuclear energy topics such as the national enrichment facility being built in Lea County and other energy-related subjects such as the status of the Public Regulation Commission's renewable portfolio standards and alternative and renewable energy technologies and facilities.

The committee was also asked to hear presentations on hydraulic fracturing technology used in the oil and gas industry in developing gas fields for the nation's energy supplies, the Carlsbad brine well situation, the status of water quality in the Red River and the status of the New Mexico Department of Environment's reorganization.

The committee was most concerned with the status of federal budgets as they relate to employment at WIPP and LANL and the completion of the cleanup of legacy waste sites at LANL.

## REDISTRICTING COMMITTEE

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The Redistricting Committee was created by Laws 2011, Chapter 185. The committee was charged with reviewing the requisites of current redistricting law, applying New Mexico Legislative Council-approved guidelines for redistricting to any redistricting plans developed by the committee, conducting public hearings to involve the public in the redistricting process and recommending legislation to the legislature.

To these ends, the committee held 11 public meetings in 10 communities across the state, beginning June 20, 2011 in Santa Fe and ending August 31, 2011, also in Santa Fe. The committee took testimony from representatives of the Navajo and Jicarilla Apache Nations and several pueblos, from municipal and county officers, from neighborhood associations and from members of the public and developed several redistricting concepts for congressional, Public Education Commission, Public Regulation Commission and house of representatives and senate districts. At its final meeting, the committee requested its staff to prepare for introduction all of the conceptual plans discussed during the interim.

The legislature met in special session September 6, 2011, concluding its business September 24, 2011. It sent the governor redistricting plans for the senate, house of representatives, Public Regulation Commission and Public Education Commission, but failed to adopt a redistricting plan for New Mexico's congressional seats. The governor signed the Public Education Commission bill and vetoed all other plans.

## REVENUE STABILIZATION AND TAX POLICY COMMITTEE

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The Revenue Stabilization and Tax Policy Committee held six meetings in 2011. Bill endorsements were completed on the second day of the December meeting. The year began with a new administration. Although Dr. Tom Clifford had been serving as the TRD tax policy director, in August he moved to the DFA as secretary. The new secretary of taxation and revenue, Demesia Padilla, found herself without seasoned economists and lost her chief economist, Clinton Turner, to the Department of Transportation immediately after the committee's meeting in October. No meeting of the committee was held in September due to the special session. Laird Graeser was hired on contract to complete bill



analyses and mentor the new economist, Ruili Yan, and the remaining economist, Chary Swaroop.

This interim, the committee reviewed energy tax and royalty expenditures. It will be necessary to discuss these expenditures again when the state is not so reliant on revenue from the energy sector to maintain a balanced budget. The committee heard four revenue reports during the interim. The first was the annual look at the post-session revenue report, and the next three were the July, October and

*Several bills introduced in the 2011 regular session were vetoed that would have significantly improved the ability of the Taxation and Revenue Department to obtain data needed to assess the value to the state of income tax credits and other tax benefits.*

December forecasts. The revenue forecasts probably took center stage this year as revenue first appeared to be making a strong comeback, but then was corrected in October to present a more conservative outlook. The December forecast increased the October numbers

for general fund revenue by \$21 million for fiscal year (FY) 2012, although in October the numbers had been decreased by \$22 million. The state appears to be steadily climbing out of its revenue deficit status and slowly recovering some of the losses it has sustained since 2008. Gross receipts revenue appears to have increased by 10.8% in FY 2011, although some of the increase was due to an increase of 0.125% that took effect in that fiscal year. Personal income tax growth was 11.5% in FY 2011. About one-half of this increase was attributable to the elimination of the deduction for state and local taxes. Corporate income tax revenue showed an amazing jump of 83.7% in FY 2011. Growth in these revenue sources is expected to slow significantly from FY 2012 through FY 2016. Beginning in the spring of FY 2011, oil and gas revenue showed significant increases due to increased prices. Prices are still volatile, but oil and gas prices seem to be recovering from declines earlier in FY 2012, although there remains a glut in supply expected to extend into the near future.

In a review by the Legislative Finance Committee (LFC) staff analyzing the revenue impact of health care tax expenditures, the Revenue Stabilization and Tax Policy Committee was reminded that without a clearly stated and measurable purpose, it was not possible to analyze the effectiveness of most tax benefits. In addition, it was noted that there remains a large problem with obtaining the needed information for those analyses. Several bills introduced in the 2011 regular session were vetoed that would have significantly improved the ability of the TRD to obtain data needed to assess the value to the state of income tax credits and other tax benefits.

The committee began a discussion about industrial revenue bonds outstanding. This data is

also difficult to access because the information is not required to be submitted by the counties or municipalities to the state, and each local government has its own method of retaining that information.

The committee reviewed 15 bills and endorsed nine. The list of bills endorsed and reviewed can be found in Section 9 of the committee's final report.

## SCIENCE, TECHNOLOGY AND TELECOMMUNICATIONS COMMITTEE

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The Science, Technology and Telecommunications Committee was appointed by the council. The committee focuses on science, technology and telecommunications as economic resources of the state and jobs generators, especially the missions, budgets and staffing at Sandia and Los Alamos national laboratories and the UNM, NMSU and NMT research initiatives that may result in creation of start-up enterprises.

LANL has a huge role in the economy of northern New Mexico by employing, directly or indirectly, 10,000 people. Although its primary mission gives it a defense focus, including nuclear deterrence, prevention of nuclear proliferation and research programs to counter nuclear terrorism and cyberattacks, LANL also has research programs in human health and solar power. The total lab budget ranges from \$700 million to \$800 million. Areas with some potential promise of economic spinoffs to benefit New Mexico include research in algae as a biofuel, intelligent wind turbines and super-computer modeling of reactor life cycles to minimize calcium carbonate buildup in commercial reactors.

Sandia National Laboratories (SNL) is also a multiprogram laboratory performing research on new energy technology, national security research, including counterterrorism, infrastructure surety and cybersecurity programs and health care research. SNL has almost 10,000 employees in New Mexico, with a payroll over \$800 million, and 8,750 retired employees. In New Mexico, SNL has spent over \$300 million in contract-related payments, over \$290 million in small business payments and approximately \$100 million in procurement card purchases and other business payments during fiscal year 2011. The Sandia Science and Technology Park is an internationally recognized technology community that was founded in 1998 and consists of 20 facilities with more than 2,000 employees.

UNM in the meantime, through its Center for High Technology Materials (CHTM), is

enhancing interaction among UNM, the federal laboratories in New Mexico and industries in the state in order to help promote economic development. The CHTM focuses on research and education in photonics, microelectronics and nanoscience. UNM's Experimental Program to Stimulate Competitive Research has a \$15 million, five-year grant from the National Science Foundation to help increase New Mexico's capacity to become competitive in seeking research funding. Some of its projects involve work on climate observation networks and studies on the relationship between acequias and socioeconomics.

Not to be outshown, NMT's vice president for research, Van Romero, told the committee about NMT's efforts in tracking asteroids and low-earth-orbit objects, oil and gas mining research, produced water, novel metalworking technology, infrastructure protection against terrorist attacks and hydrology research.

NMSU rounded out the four-year research universities with descriptions of work in algal biofuels, telecommunications, energy efficiency and unmanned aircraft. Dr. Romero also discussed the value of a degree from NMT, pointing out that the school is listed among the top 20 doctoral degree-producing schools in the country, and that students from the school can earn significantly higher starting and mid-career salaries as compared to other schools.

Relative to state government information technology systems, Darryl Ackley, secretary of information technology, and Mike Baca, acting director of policy and planning, briefed the committee on the Department of Information Technology (DoIT), the consolidated IT agency, which is almost entirely revenue funded. The DoIT offers services such as the Statewide Human Resources, Accounting and Financial Management Reporting System (SHARE), mainframe stabilization, performance monitoring, security and billing. The DoIT oversees more than 50 projects with a total value of approximately \$250 million. The Integrated Strategic Broadband Initiative strives to provide broadband access to the entire state. The program is funded in part by ARRA stimulus funds. The total federal award is \$4.8 million with a state match requirement of \$1.2 million. ARRA funds are now supporting a number of broadband infrastructure projects in New Mexico, including Baca Valley Telephone, Windstream Communications, U.S. Cable and others. In 2010, the DoIT was awarded \$1.4 million from the National Telecommunications and Information Administration States Broadband Data and Development Program funding for a two-year project to gather and analyze data and to map broadband in the state, with an additional \$500,000 for five years of statewide broadband planning.

The committee also heard testimony on the status and economic prospects of Spaceport America.

The committee was also interested in potential jobs and economic development from electric power transmission and distribution developments, including those fostered by the RETA and smart grid innovations in the electric power industry. More conventional energy resources were also of interest, such as the potential for the compressed natural gas industry.

Another key interest of the committee is the effective use and cybersecurity of IT systems by state government. To that end, extensive testimony was received on IT and telecommunications systems of the DoIT, TRD and WSD.

Members requested attention by the full committee to legislation they intend to sponsor, including telecommunications regulatory reform, rural universal service support and long-distance interconnections, E-911 and metal theft legislation.

The committee endorsed only one measure, proposed legislation to provide tax incentives for pyrolysis-derived hydrogen producers.

## TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

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The Tobacco Settlement Revenue Oversight Committee was created in statute as a joint interim legislative committee. The committee monitors the use of revenues received as a result of the Master Settlement Agreement signed by the attorneys general of 46 states with the four largest tobacco companies in the United States — Brown & Williamson, Lorillard, Philip Morris and R.J. Reynolds. The agreement was signed on November 23, 1998. The committee meets during the interim "to receive and review evaluations of programs" that receive appropriations of the tobacco revenues. Each year, the committee takes testimony regarding the performance results of programs funded and prepares recommendations for future funding. Those funding recommendations were provided to the LFC on December 8, 2011 by the committee co-chairs.

*If New Mexico is found not to have diligently enforced its tobacco statutes every year since 2003, nearly \$350 million in payments already received by the state is at risk.*

The interim committee works closely with representatives of the AGO to ensure state compliance with the Master Settlement Agreement. The AGO is currently in arbitration with tobacco manufacturers over the state's diligent enforcement efforts. If New Mexico is found not to have diligently enforced its tobacco statutes every year since 2003, nearly \$350 million in payments already received by the state is at risk. Also, participating manufacturers in the Master Settlement Agreement now contend that New Mexico has not had a qualifying statute since 2006, placing at risk up to \$240 million of the same payments made under the agreement. Decisions in these matters may not receive even partial resolution until April 2012, raising questions as to the state's potential revenue loss for the current and future fiscal years.

The Tobacco Settlement Permanent Fund (Permanent Fund) consists "of money distributed to the state pursuant to the Master Settlement Agreement entered into between tobacco product manufacturers and various states, including New Mexico". The Tobacco Settlement Program Fund (Program Fund) consists "of distributions made to the fund from the tobacco settlement permanent fund". Each year, 50% of the revenues are retained in the Permanent Fund and the remaining 50% of the revenues are placed in the Program Fund, from which it is appropriated primarily to the DOH, the HSD and the UNM Health Sciences Center.

In 2009, Senate Bill 79 amended the law to provide for an additional 50% distribution to the Program Fund for appropriations in FY 2009 and FY 2010. House Bill 79 (2010) and House Bill 79 (2011) provided for the additional 50% distribution to the Program Fund for FY 2011, FY 2012 and FY 2013. The co-chairs noted in their presentation to the LFC that for nine of the fiscal years occurring since the funds were created in 1999, including the current fiscal year, the 50% distributions originally intended to be retained in the Permanent Fund have been used to cover expenditures.

Payments received under the Master Settlement Agreement for April 2011 totaled just under \$38.56 million, approximately \$1.4 million less than projected. As a result, the agencies receiving tobacco settlement program funds had a proportionate share of their FY 2012 appropriations reduced prior to the start of the budget cycle in July 2011.

The FY 2011 ending market value of the Permanent Fund as reported by the SIC was \$148 million. This is substantially less than the 50% amount (\$245 million plus investment income) that would be in the fund if only 50% of the distributions had been appropriated.

A flat revenue projection for FY 2013 is \$38.6 million, affording 100% of that amount for distribution to the Program Fund. The committee's recommendations were based on this projection,

although the committee did not make a recommendation on the second 50% distribution, which historically has been appropriated for Medicaid.

After meeting four times to receive testimony from agencies and programs currently receiving appropriations, the committee adopted funding recommendations for FY 2013. The committee's recommendations for FY 2013 are similar to those in the current year. Due to unrealized revenue, some programs at UNM are not receiving tobacco funds in the current fiscal year. The committee is supporting the university's request for a lump-sum appropriation with the condition that restrictive language be placed in the general appropriation act requiring that any expenditure of the appropriation be in accordance with the statutory requirements for the program funds.

The committee, along with the Revenue Stabilization and Tax Policy Committee, endorsed a bill presented by the AGO that is nearly identical to Senate Bill 397 (2011), which was vetoed by the governor. The bill amends the definition of "units sold" to include both "tax exempt" and "tax-credit" stamps for the purposes of determining escrow payments of cigarette manufacturers that are not participating in the Master Settlement Agreement. The purpose of the bill is to remove ambiguity under current law about which sales are subject to escrow payment and to ensure equalization of treatment of participating and nonparticipating manufacturers. The bill contains a retroactive clause, which was not in Senate Bill 397.

## **WATER AND NATURAL RESOURCES COMMITTEE**

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The committee was scheduled for five meetings during the 2011 interim, with all except the August meeting held in Santa Fe due to budget concerns. The committee held its August meeting in Silver City to address several issues specific to southern New Mexico.

Continued drought and major wildfires dominated the news in late spring and early summer; the state forester reported that as of June 30, 1,021 fires had burned more than 750,000 acres and 100 structures in New Mexico, while the state engineer reported that the period between January and April 2011 was the third driest on record in the state and the driest on record for the Albuquerque and Roswell areas. Partly in response to the effects of the drought, both the state engineer and the Interstate Stream Commission noted that the 2008 operating agreement between the United States Bureau of Reclamation (USBR), the Elephant Butte Irrigation District and El Paso County Water

Improvement District No. 1, to which the state was not a party, does not create a sustainable water management system for the Lower Rio Grande Valley and therefore needed to be modified. The attorney general filed suit in August against the USBR asking the court for declaratory and injunctive relief to prevent the USBR from reallocating water from New Mexico to Texas under that agreement.

Other issues covered during the interim included the need for dam rehabilitation statewide;

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funding for levee reconstruction along the Middle Rio Grande; implementation of the Navajo Nation, Aamodt and Taos Indian water rights settlements; implementation of the Arizona Water Settlements Act; issues relating to the federal Endangered Species Act; how to

address the problem of unwanted horses; costs of abandoned and orphan well sites that are not properly cleaned up; and staffing and funding levels for the state engineer adjudications program.

The committee endorsed one piece of legislation this interim, a bill that provides for the licensing of the growing, selling and processing of industrial hemp.



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